

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE CITY OF DEARBORN,

Plaintiff-Appellant,

v

MOHAMAD SOUEIDAN,

Defendant-Appellee.

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UNPUBLISHED  
December 5, 2013

No. 310411  
Wayne Circuit Court  
LC No. 11-011271-AR

Before: FORT HOOD, P.J., and SAAD and BORRELLO, JJ.

PER CURIAM.

Defendant appeals by leave granted<sup>1</sup> the circuit court order reversing the district court's denial of defendant's motion to set aside his guilty plea conviction for possession of marijuana, MCL 333.7403(2)(d), alleging that the plea was not knowingly entered due to ineffective assistance of counsel. We reverse the order of the circuit court and reinstate the district court's denial of defendant's motion.

The court file and other records from defendant's 2001 conviction have been destroyed. The only pertinent evidence properly before this Court is defendant's affidavit in support of his motion. In his affidavit, defendant claimed he pleaded guilty to the possession of marijuana charge unknowingly, only to discover, some ten years later, the true nature of his plea. Defendant further alleged that his trial counsel (now deceased) caused him to believe he was pleading guilty to assault and battery only, not to possession of marijuana.

This Court reviews a trial court's decision on a motion to withdraw a plea for an abuse of discretion. *People v Billings*, 283 Mich App 538, 549; 770 NW2d 893 (2009). This Court reviews a trial court's decision on a motion for relief from judgment for an abuse of discretion and its findings of facts supporting that decision for clear error. *People v Swain*, 288 Mich App 609, 628; 794 NW2d 92 (2010). An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes, or commits an error of law. *Id.* The interpretation of a court rule presents a question of law and is reviewed de novo.

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<sup>1</sup> *People of the City of Dearborn, v Soueidan*, unpublished order of the Court of Appeals, issued March 7, 2013 (Docket No. 310411).

*Id.* A court rule is interpreted using the same principles that govern statutory interpretation. *People v Buie*, 491 Mich 294, 304; 817 NW2d 33 (2012). If the language of the court rule is plain and unambiguous, the meaning plainly expressed must be enforced without judicial construction or interpretation. *People v Phillips*, 468 Mich 583, 589; 663 NW2d 463 (2003).

“Where a motion to withdraw a guilty plea is made after conviction and sentencing, it must be made based on a showing of miscarriage of justice.” *People v Ward*, 459 Mich 602, 614; 594 NW2d 47 (1999). The defendant bears the high burden of seeking relief from a long-delayed attack on a conviction, whether direct or collateral, because of the interest in finality of judgments and the efficient and effective administration of justice. *Id.* at 611. “Requests to withdraw pleas are generally regarded as frivolous where circumstances indicate that the true motivation behind the motion is sentencing concerns.” *Id.* at 614.

Subchapter 6.600 of the court rules governs criminal procedure in district court. MCR 6.610(E)(8) governs challenges to pleas of guilty and nolo contendere in district court; it provides:

(8) The following provisions apply where a defendant seeks to challenge the plea.

(a) A defendant may not challenge a plea on appeal unless the defendant moved in the trial court to withdraw the plea for noncompliance with these rules. Such a motion may be made either before or after sentence has been imposed. After imposition of sentence, the defendant may file a motion to withdraw the plea within the time for filing an application for leave to appeal under MCR 7.105(F)(2).

(b) If the trial court determines that a deviation affecting substantial rights occurred, it shall correct the deviation and give the defendant the option of permitting the plea to stand or of withdrawing the plea. If the trial court determines either a deviation did not occur, or that the deviation did not affect substantial rights, it may permit the defendant to withdraw the plea only if it does not cause substantial prejudice to the people because of reliance on the plea.

(c) If a deviation is corrected, any appeal will be on the whole record including the subsequent advice and inquiries.

MCR 7.105(F)(2) provides “a late application [for leave to appeal to the circuit court] may not be filed more than 6 months after entry of . . . the order, judgment, or decision appealed.” Therefore, a motion to withdraw a guilty plea in district court must be brought no later than 6 months after the date of conviction. MCR 6.610(E)(8), MCR 7.105(F)(2), *People v Clement*, 254 Mich App 387, 393; 657 NW2d 172 (2002).

MCR 6.610(E) provides a specific procedure for challenging guilty pleas in district court. Therefore, contrary to defendant’s assertions, MCR 2.612(C)(1) does not apply to his motion to set aside the 2001 conviction. MCR 6.001(D). Furthermore, under the plain language of MCR 6.501, the relief from judgment procedures set out in Chapter 6.500 of the Michigan Court Rules on which the circuit court relied, also do not apply to district court cases.

Defendant's motion, brought more than ten years after the date of conviction, was barred under the clear language of the court rules. *Phillips*, 468 Mich at 589. Moreover, the circumstances indicate that the true motivation underlying the motion was to alleviate immigration consequences. *Ward*, 459 Mich at 614. Under the circumstances, the circuit court's order reversing the district court and ordering it to set aside defendant's conviction constituted an abuse of discretion. *Billings*, 283 Mich App at 549.

We reverse the circuit court and reinstate the order of the district court denying defendant's motion. We do not retain jurisdiction.

/s/ Karen M. Fort Hood

/s/ Henry William Saad

/s/ Stephen L. Borrello